GREGORY ANELON, SR.
(ON RECONSIDERATION)

IBLA 75-3 Decided November 19, 1981

Petition for reconsideration of Board decision that affirmed a decision of the Alaska State Office of the Bureau of Land Management rejecting Alaska Native allotment application AA 6127.

Petition granted; prior Board decision, 21 IBLA 230 (1975), vacated, and case remanded.

1. Alaska: Native Allotments

In sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371, 2435 (Dec. 2, 1980), Congress provided that all Native allotment applications pending before the Department on Dec. 18, 1971, which described either land that was unreserved on Dec. 13, 1968, or land within the National Petroleum Reserve -- Alaska, were to be approved on the 180th day following the effective date of that Act, subject to valid existing rights, unless otherwise provided by other paragraphs or subsections of that section. Failure to provide adequate evidence of use and occupancy does not bar approval of an allotment application under that provision. Where such an application has been rejected, the case will be remanded to the Alaska State Office for approval pursuant to sec. 905 of the Alaska National Interest Lands Conservation Act, unless one of that statute's exceptions applies to require further adjudication of the case.

APPEARANCES: Alaska Legal Services Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of August 1, 1975, styled Gregory Anelon, Sr., 21 IBLA 230 (1975), this Board affirmed a decision of the Alaska State Office of the Bureau of Land Management (BLM) rejecting Anelon's Native allotment application, AA 6127, filed pursuant to the Alaskan Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed, 43 U.S.C. § 1617 (1976). Anelon (appellant) has petitioned the Board to reconsider its earlier decision. We grant the petition in order to review the case in light of the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487, 94 Stat. 2371, 2435, enacted December 2, 1980.

[1] BLM rejected appellant's application because it found the evidence insufficient to show that he had used the applicable land for a minimum of 5 years in a manner potentially exclusive of all others. However, if appellant qualifies under ANILCA, supra, BLM's finding is rendered moot and inconsequential. Section 905(a)(1) of ANILCA states:

> Subject to valid existing rights, all Alaska Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended) which were pending before the Department of the Interior on or before December 18, 1971, and which describe either land that was unreserved on December 13, 1968, or land within the National Petroleum Reserve -- Alaska (then identified as Naval Petroleum Reserve No. 4) are hereby approved on the one hundred and eightieth day following the effective date of this Act, except where provided otherwise by paragraph (3), (4), (5), or (6) of this subsection, or where the land description of the allotment must be adjusted pursuant to subsection (b) of this section, in which cases approval pursuant to the terms of this subsection shall be effective at the time the adjustment becomes final. The Secretary shall cause allotments approved pursuant to this section to be surveyed and shall issue trust certificates therefor.

The named paragraphs containing potential exceptions to section 905(a)(1) describe circumstances under which the application would remain subject to adjudication under the Native Allotment Act, supra. For example, automatic approval of an application is barred if on or before the 180th day following the effective date of the Act "[a] person or entity files a protest with the Secretary stating that the applicant is not entitled to the land described in the allotment application and that said land is the situs of improvements claimed by the person or entity." Section 905(a)(5)(C). Also, adjudication is necessary where the land is valuable for certain minerals, or the application describes land in a previously established unit of the national park system or in a state selection, but where the allotment is not within the core township of the Native village.

The primary basis of BLM's decision to reject appellant's application, insufficient use and occupation of the land, must be deemed irrelevant under ANILCA so long as appellant qualifies thereunder. 1/ BLM must now determine whether the requirements of ANILCA have been met in this case, and then take the appropriate action.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we vacate our decision in Gregory Anelon, Sr., 21 IBLA 230 (1975), and remand the case to BLM for further action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge

1/ The requirement that an application be pending before the Department on Dec. 18, 1971, must be met regardless of whether the application is reviewed under section 905 of the Alaska National Interest Lands Conservation Act or the Alaska Native Allotment Act, because the Native Allotment Act was repealed on that date and no application could be approved thereunder unless it was pending before the Department of the Interior on Dec. 18, 1971. 43 U.S.C. § 1617(a) (1976). Appellant's application was dated Jan. 12, 1971.